WILLARD PEASE OIL & GAS CO.

IBLA 81-28 Decided February 19, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, holding oil and gas lease Utah 0145143 to have terminated by operation of law.

Vacated and remanded.

1. Hearings--Notice: Generally--Oil and Gas Leases: Termination--Oil and Gas Leases: Well Capable of Production--Rules of Practice: Hearings

   Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

APPEARANCES: Oliver W. Gushee, Jr., Esq., Pruitt & Gushee, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated August 25, 1980, by the Utah State Office, Bureau of Land Management (BLM), holding Amoco Production Company's lease Utah 0145143 to have terminated effective May 31, 1979.

The lease was issued effective March 1, 1965, for a 10-year period. Amoco Production Company (Amoco) is the owner of lease U 0145143. On November 24, 1974, appellant completed well No. 1-143,

and the lease was extended by production, although the well was shut in at the time of completion. Appellant herein, the well operator, owns operating rights and working interests in a percentage of the lease. On September 15, 1978, appellant assigned Amoco an undivided 50 percent of its operating rights and working interest.

By letter dated April 24, 1980, the District Engineer, Geological Survey (Survey), advised appellant as follows:

> A review of our files concerning your well No. 1-143, Federal lease U-0145143, Grand County, Utah, shows that the well has been shut-in since June 1979. Since this lease is in its extended term by production, it must contain a well capable of producing hydrocarbons in paying quantities, i.e., sufficient quantities to pay the day-to-day operating and lease maintenance costs, or it will be considered to have expired.
>
> In the absence of an acceptable showing by you that the subject well is capable of producing leasehold substances in paying quantities, within sixty (60) days from the receipt of this notice, this office will consider the lease to have terminated by operation of law effective May 31, 1979.
>
> If you consider the well incapable of production in paying quantities, the subject lease will terminate and you should make plans to plug and abandon the well.
>
> The foregoing information is furnished so that you may take such action as you consider appropriate. You are further reminded that no production tests or other operations should be conducted on the lease without prior approval by this office.

By memorandum dated August 13, 1980, Survey advised BLM of its determination that the lease was no longer capable of production after May 1979, that no approved operations to restore production had been commenced within the 60 days thereafter as allowed under 43 CFR 3107.3-1, and that, therefore, the lease should be considered to have terminated by operation of law. The regulation states:

> A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

BLM issued its decision terminating the lease under the authority of 43 CFR 3107.3-2 which provides:

> No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Area Oil and Gas Supervisor to do so: Provided, That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the act.

In the statement of reasons appellant asserts that the April 24, 1980, letter from Survey was "patently defective" as notice upon which BLM could terminate the lease under 30 U.S.C. § 226(f) (1976) because he was not given notice to place the well on a producing status. 30 U.S.C. § 226(f) (1976) provides:

> No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so long as oil and gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than sixty days after notice by registered or certified mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this chapter.

Appellant contends that Survey's notice was deficient because it did not quote that portion of the regulatory language which requires a lessee "to place the well on a producing status" but only requested an acceptable showing that the well was capable of production in paying quantities. Appellant also asserts that the notice was ineffective because no copy was served on Amoco. 1/

1/ Amoco apparently did not receive a copy of the April 24, 1980, notice from Survey, however, Amoco did receive a copy of the decision appealed from and chose not to exercise its right to appeal. Under the circumstances, lack of notice to Amoco would not render the notice defective to appellant.

Appellant further contends that it made an acceptable showing to Survey within the 60 days that well No. 1-143 was capable of production which was acknowledged as acceptable or unnecessary. In the alternative, appellant contends that Survey through oral representations had extended the time period for placing well No. 1-143 back into full production. Appellant has submitted the affidavit of a petroleum engineer familiar with the well. The engineer states that he evaluated the well, found it to have 150,000 Mcf in reservoir reserves, and capable of sufficient deliverability to produce gas in paying quantity. He further states that he telephoned Survey at appellant's direction in response to the notice, and that as a result of that conversation with a Survey representative in which he explained that the shut-in status of Well No. 1-143 was due to increased line pressure in the gathering system and that continued production on well No. 1-143 required the aid of a compressor unit, he was left with the impression that under the circumstances the April 24, 1980 notice was sent in error and was not applicable. 2/

Appellant states in his brief that "[p]lacing a compressor unit upon the well was a satisfactory method of demonstrating the capability of the well to produce in paying quantities and, also, would immediately restore production as soon as installed and operational." Appellant contends that the well is capable of production and that under applicable Board decisions the case should be remanded for reevaluation and hearing.

[1] We agree with appellant that the Survey notice of April 24, 1979, could not serve as a basis for the BLM decision to terminate the lease under 43 CFR 3107.3-2. An oil and gas lease in its extended term by production terminates by operation of law where paying production ceases on the lease subject only to three statutory exceptions. Emily H. Oien, 25 IBLA 193 (1976); Steelco Drilling Corporation, 64 I.D. 214 (1957). The regulations implementing the exceptions relevant to this appeal are 43 CFR 3107.3-1, supra, and 43 CFR 3107.3-2, supra.

The Survey notice required appellant to show within 60 days that the well on the lease was capable of producing. The Survey memorandum to BLM concluded that the lease terminated because there was no showing under 43 CFR 3107.3-1, within the 60 days afforded appellants, that the well was capable of producing. The BLM decision, however, cited 43 CFR 3107.3-2 as authority, and terminated the lease because appellant failed to place the well in a producing status within 60 days of notice to do so. Appellant, however, was never given notice to place the well in a

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2/ Erroneous or incomplete information or opinions provided by an officer, agent or employee of this Department cannot operate to vest any right not authorized by law, 43 CFR 1810.3(c); Energy Trading, Inc., 50 IBLA 9 (1980). Therefore, appellant's contention that it complied with this request, which was accepted as evidenced by the affidavit of the engineer, is not well taken.

producing status as required by 43 CFR 3107.3-2, only to show that there was a well on the lease capable of production pursuant to 43 CFR 3107.3-1. Obviously, BLM concluded, contrary to Survey, that there was a well on the lease capable of producing.

If the well on the lease was capable of producing as of June 1, 1979, appellant's lease would continue until appellant was given notice to place the well in a producing status and failed to comply. Since the Survey recommendation and the BLM decision are in conflict as to the status of the well, we will remand the case to the State Office for BLM to determine whether the well on the lease was capable of producing hydrocarbons in paying quantities as of June 1, 1979. Appellant should be allowed to present evidence to BLM to support its position. Should BLM determine that well No. 1-143 was capable of production as of June 1, 1979, appellant is entitled to 60-days notice to place the well in a producing status in accordance with 43 CFR 3107.3-2 prior to termination. Should BLM conclude that as of June 1, 1979, there was no well on the lease capable of production, appellant is not entitled to additional notice prior to termination of the lease. Universal Resources Corp., 37 IBLA 61 (1977); Estate of Anna Arona, 20 IBLA 344 (1975). If BLM finds that the lease so terminated and appellant disputes that factual determination, the lessee may request a hearing before an Administrative Law Judge. If a hearing is held, lessee will have the burden of establishing the presence of a well capable of production as of June 1, 1979. Universal Resources Corp., supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case is remanded for further action consistent with the decision.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge